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HOUSE BILL 137

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rick Miera

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATIONAL ASSISTANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE EDUCATIONAL ASSISTANCE ACT; PROVIDING FOR THE CONTINUED DEBT SERVICE AND OTHER PAYMENTS ON OUTSTANDING BONDS; PROTECTING THE RIGHTS OF BONDHOLDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 21-21A-3 NMSA 1978 (being Laws 1981, Chapter 319, Section 3, as amended) is amended to read:

"21-21A-3. DEFINITIONS.--As used in the Educational Assistance Act:

A. "bond" means any bond, note or other evidence of indebtedness;

~~[B. "corporation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to guarantee educational loans;~~

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1 ~~E.~~ B. "educational loan" means a loan for
2 educational purposes made to or for the benefit of qualified
3 persons;

4 ~~D.~~ C. "foundation" means a corporation formed
5 pursuant to the provisions of the Educational Assistance Act to
6 provide financial assistance for post-secondary education; and

7 ~~E.~~ D. "institution of higher education" means the
8 state institutions of higher education enumerated in Article
9 12, Section 11 of the constitution of New Mexico or other
10 institution of higher education approved by the foundation."

11 **SECTION 2.** Section 21-21A-7 NMSA 1978 (being Laws 1981,
12 Chapter 319, Section 7, as amended) is amended to read:

13 "21-21A-7. FOUNDATION POWERS.--The foundation may from
14 time to time issue negotiable bonds in conformity with the
15 applicable provisions of the Uniform Commercial Code. The
16 foundation shall have all the powers necessary and convenient
17 to carry out its purposes under the Educational Assistance Act
18 or other purpose identified by the foundation, including the
19 following powers:

20 A. to make or participate in the making of
21 educational loans, to purchase or participate in the purchase
22 of educational loans and to contract in advance for any such
23 purchase or to purchase and retain rights to make any such
24 purchase and to pay any amounts payable in respect of such
25 rights;

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1 B. to sell or participate in the sale of
2 educational loans to the student loan marketing association or
3 to other purchasers, in conformity with the federal Higher
4 Education Act of 1965, as amended, any such sale to be public
5 or private and on such terms as the foundation may authorize,
6 and to contract in advance for any such sale or to purchase and
7 retain rights to make any such sale and to pay commitment fees
8 or any other amounts payable in respect of such rights;

9 C. to collect and pay reasonable fees and charges
10 in connection with the making, purchasing, selling and
11 servicing or the causing to be made, purchased, sold or
12 serviced of educational loans held by the foundation;

13 D. to enter into an agreement with insurance
14 carriers to insure against any loss in connection with its
15 operations, including without limitation the repayment of any
16 educational loan, in such amounts and from such insurers as it
17 deems necessary or desirable and pay the premiums for that
18 insurance;

19 E. to consent, when it deems appropriate, to the
20 modification of the rate of interest, the time of payment of
21 any installment of principal or interest or any other terms of
22 any educational loan held by the foundation; provided that no
23 such consent shall be made or given if the effect would be to
24 lessen or invalidate any insurance coverage or reinsurance in
25 respect of any such educational loan;

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1 F. to employ an executive director and such other
2 officers and employees as it deems necessary and set their
3 compensation and prescribe their duties; ~~[provided that no~~
4 ~~salary of any officer or employee of the foundation shall~~
5 ~~exceed ninety percent of the average of the salaries of the~~
6 ~~presidents of the state institutions of higher education~~
7 ~~enumerated in Article 12, Section 11 of the constitution of New~~
8 ~~Mexico;~~

9 G. ~~to adopt and publish rules in accordance with~~
10 ~~the provisions of the State Rules Act respecting the~~
11 ~~foundation's educational loan program and such other rules as~~
12 ~~are necessary to effectuate the program's purposes and the~~
13 ~~functions and duties of the foundation;~~

14 H.] G. to make, execute and effectuate any and all
15 agreements or other documents with any federal or state agency
16 or other person, corporation, association, partnership,
17 organization or entity necessary to accomplish its purposes
18 under the Educational Assistance Act;

19 [I.] H. to authorize a retirement program for
20 salaried officers and employees of the foundation;

21 [J.] I. to authorize reimbursement of expenses of
22 salaried officers and employees of the foundation; ~~[not~~
23 ~~exceeding the amounts authorized by law for salaried state~~
24 ~~public officers and employees;~~

25 K.] J. to purchase liability insurance for officers

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1 and directors and such other insurance as may be reasonable and
2 necessary;

3 [~~L.~~] K. to accept [~~appropriations~~] loans, public or
4 private grants, [~~revenue sharing~~] devises, gifts, bequests
5 [~~federal grants~~] and any other aid from any source whatsoever
6 and to agree to and comply with conditions incident thereto;

7 [~~M.~~] L. to sue and be sued in its own name and to
8 plead and interplead;

9 [~~N.~~] M. to adopt an official seal and alter it at
10 pleasure;

11 [~~O.~~] N. to adopt bylaws and policies for the
12 regulation of its affairs and the conduct of its business;

13 [~~P.~~] O. to employ fiscal consultants, attorneys,
14 counselors and such other consultants and employees as may be
15 required in its judgment and to fix and pay their compensation;

16 [~~Q.~~] P. to invest any funds held in reserves, held
17 in sinking fund accounts or not required for immediate
18 disbursement; [~~as provided in Section 21-21A-17 NMSA 1978;~~

19 ~~R.~~] Q. to fix, revise from time to time, charge and
20 collect fees and other charges for services rendered by the
21 foundation in connection with educational loan, scholarship,
22 grant, work study and other educational assistance programs;
23 and

24 [~~S.~~] R. to do any and all things necessary or
25 convenient to carry out its purpose and powers under the

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1 Educational Assistance Act or other purpose identified by the
2 foundation."

3 SECTION 3. Section 21-21A-6 NMSA 1978 (being Laws 1981,
4 Chapter 319, Section 6, as amended) is amended to read:

5 "21-21A-6. FOUNDATION--BOARD OF DIRECTORS--MEMBERS--
6 TERMS--MEETINGS--BYLAWS.--

7 A. The foundation shall be governed by and all of
8 its functions, powers and duties shall be exercised by a board
9 of directors. After the effective date of this 2011 act, the
10 board sitting prior to the effective date of this 2011 act
11 shall appoint the next successor board and shall establish
12 staggered four-year terms for the members. The board shall
13 consist of [~~eleven members as follows~~] the following members:

14 [~~(1) six members representing the institutions~~
15 ~~of higher education, consisting of one member from each of the~~
16 ~~boards of regents of the university of New Mexico, New Mexico~~
17 ~~state university, New Mexico highlands university, New Mexico~~
18 ~~institute of mining and technology, western New Mexico~~
19 ~~university and eastern New Mexico university, each member to be~~
20 ~~appointed by the board of regents from which the member is~~
21 ~~chosen;~~

22 [~~(2) the regent members shall appoint three~~
23 ~~members as follows:~~

24 [~~(a) one member shall be an administrator~~
25 ~~of a private college, university or vocational school located~~

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1 ~~in New Mexico; and~~

2 ~~(b) two members shall be officers or~~
3 ~~directors of financial institutions located in New Mexico;~~

4 ~~(3) one member shall be]~~

5 (1) the state treasurer or [his] the state
6 treasurer's designee; [and

7 ~~(4) one member of the governing board of a~~
8 ~~two-year public community or technical college that is not a~~
9 ~~branch of a university, who shall be appointed by a~~
10 ~~representative body of the community and technical colleges.~~

11 ~~B. The regent members and governing board member~~
12 ~~shall serve during their terms as regents or governing board~~
13 ~~member unless sooner terminated by the appointing boards. A~~
14 ~~vacancy shall be filled by the board of regents making the~~
15 ~~original appointment or by the two-year college representative~~
16 ~~body making the original appointment. The three members~~
17 ~~appointed by the regent members shall be appointed for~~
18 ~~four-year terms.]~~

19 (2) two members representing post-secondary
20 education;

21 (3) two members representing lending
22 institutions; and

23 (4) other members as provided by the
24 foundation bylaws.

25 B. A vacancy shall be filled by appointment by the

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1 board for the unexpired term.

2 C. The board shall elect a [~~chairman~~] chair and
3 such other officers as it deems necessary.

4 D. Members of the board shall receive no
5 compensation for their service, but [~~shall~~] may be reimbursed
6 on a per diem and mileage basis for their actual and necessary
7 expenses reasonably incurred in the performance of their duties
8 as board members, in an amount not exceeding the amount
9 authorized by law for nonsalaried public officers of
10 governmental entities of this state.

11 E. Board meetings shall be open to the public. The
12 board shall adopt bylaws governing board meetings consistent
13 with the provisions of the Open Meetings Act.

14 F. The foundation shall adopt bylaws, in accordance
15 with the provisions of the Nonprofit Corporation Act, governing
16 the conduct of the foundation in the performance of its duties
17 under the Educational Assistance Act and the federal Higher
18 Education Act of 1965, as amended.

19 ~~[G. Officers and employees of the foundation may~~
20 ~~serve simultaneously as officers and employees of the~~
21 ~~corporation, but no additional compensation may be paid for~~
22 ~~such service. The chairman of the board of directors of the~~
23 ~~foundation shall serve on the board of directors of the~~
24 ~~corporation, but no other members of the board of directors~~
25 ~~of the foundation may serve on the corporation board of~~

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1 ~~directors.]"~~

2 SECTION 4. Section 21-21A-9 NMSA 1978 (being Laws 1981,
3 Chapter 319, Section 9) is amended to read:

4 "21-21A-9. STATUS OF BONDS.--

5 A. Bonds and other obligations issued under the
6 provisions of the Educational Assistance Act shall not be
7 deemed to constitute a debt, liability or obligation of or a
8 pledge of the faith and credit of the state or any political
9 subdivision thereof, but shall be payable solely from the
10 revenues or assets of the foundation pledged for such payment.
11 Each obligation issued on behalf of the foundation under that
12 act shall contain on its face a statement to the effect that
13 neither the state nor the foundation shall be obligated to pay
14 the ~~[same]~~ obligation or the interest ~~[thereon]~~ on the
15 obligation except from the revenues or assets pledged
16 ~~[therefor]~~ for payment and that neither the faith and credit
17 nor the taxing power of the state or any political subdivision
18 thereof is pledged to the payment of the principal of or the
19 interest on such obligation.

20 B. Expenses incurred by the foundation ~~[and the~~
21 ~~guarantee corporation]~~ in carrying out the provisions of the
22 Educational Assistance Act may be made payable from the
23 revenues and funds provided pursuant to that act, and no
24 liability shall be incurred by the foundation ~~[or the guarantee~~
25 ~~corporation thereunder]~~ under that act beyond the extent to

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1 which such money [~~shall have~~] has been [~~so~~] provided."

2 SECTION 5. Section 21-21A-13 NMSA 1978 (being Laws 1981,
3 Chapter 319, Section 13) is amended to read:

4 "21-21A-13. ALL MONEY RECEIVED DEEMED TRUST FUNDS.--
5 Notwithstanding any other provisions of law, all money received
6 by the foundation under the [~~provision~~] provisions of the
7 Educational Assistance Act shall be deemed to be trust funds to
8 be held and applied solely as provided in that act. The
9 resolution authorizing any obligations or the trust agreement
10 securing the obligations may provide that any of the money may
11 be temporarily invested pending [~~the~~] disbursement [~~thereof~~]
12 and shall provide that any officer with whom or any bank or
13 trust company with which the money is deposited shall act as
14 trustee of the money and shall hold and apply the money for the
15 purposes of the Educational Assistance Act [~~subject to such~~
16 ~~regulations as that act and~~] pursuant to the resolution or
17 trust agreement. [~~may provide. Any such money or any other~~
18 ~~money of the foundation may be invested as provided in that~~
19 ~~act.~~]"

20 SECTION 6. Section 21-21A-16 NMSA 1978 (being Laws 1981,
21 Chapter 319, Section 16) is amended to read:

22 "21-21A-16. ANNUAL REPORT AND AUDIT.--

23 A. The foundation [~~and the corporation~~] shall,
24 promptly following the close of each fiscal year, [~~each~~] submit
25 an annual report of [~~their~~] its activities for the preceding

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1 year to the governor, the ~~[state corporation]~~ corporations
2 bureau of the public regulation commission, the state auditor
3 and the legislative finance committee. Each report shall set
4 forth a complete operating and financial statement of the
5 foundation ~~[and the corporation]~~ during the year. The ~~[boards]~~
6 board of directors of the foundation ~~[and the corporation]~~
7 shall annually contract with an independent certified public
8 accountant, licensed by the state, to perform ~~[a joint]~~ an
9 examination and audit of the accounts and books of the
10 foundation ~~[and the corporation]~~, including ~~[their]~~ its
11 receipts, disbursements, contracts, leases, sinking funds,
12 investments and any other records and papers relating to
13 ~~[their]~~ its financial standing, and shall make a determination
14 as to whether the foundation ~~[and corporation have]~~ has
15 complied with the provisions of the Educational Assistance Act.
16 ~~[If the boards of directors cannot agree upon an auditor to~~
17 ~~perform the annual audit, the director of the financial~~
18 ~~institutions division of the commerce and industry department~~
19 ~~shall appoint the auditor.]~~ The person performing the audit
20 shall furnish copies of the audit report to the governor, the
21 ~~[state corporation commission]~~ corporations bureau, the state
22 auditor and the legislative finance committee, where they shall
23 be placed on file and made available for inspection by the
24 general public.

25 ~~[B. The director of the financial institutions~~

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1 ~~division of the commerce and industry department shall examine~~
2 ~~the condition of the foundation and corporation at least once~~
3 ~~in each calendar year and shall make a determination as to~~
4 ~~whether the foundation and the corporation have complied with~~
5 ~~the provisions of the Educational Assistance Act. The results~~
6 ~~of the examination shall be set forth in a written report which~~
7 ~~shall be a public record.~~

8 ~~G.]~~ B. Subject to the provisions of any contract
9 with bondholders or noteholders, the foundation shall prescribe
10 a system of accounts.

11 ~~D.]~~ C. The costs of audits and examinations
12 performed pursuant to this section shall be paid by the
13 foundation."

14 SECTION 7. Section 21-21A-21 NMSA 1978 (being Laws 1981,
15 Chapter 319, Section 21) is amended to read:

16 "21-21A-21. DISSOLUTION OF [~~CORPORATION OR~~] FOUNDATION.--
17 Upon termination or dissolution, all rights and properties of
18 the [~~corporation or~~] foundation shall pass to and be vested in
19 the state, subject to the rights of any bondholders,
20 lienholders and other creditors."

21 SECTION 8. A new section of the Educational Assistance
22 Act is enacted to read:

23 "[NEW MATERIAL] EDUCATIONAL ASSISTANCE--FOUNDATION
24 ACTIVITIES NOT AFFECTED BY REPEAL.--The repeal of sections or
25 parts of sections of the Educational Assistance Act does not

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1 affect the existence of the educational assistance foundation
2 created pursuant to that act or its activities in relation to
3 bonds issued and outstanding or the servicing of student loans
4 outstanding, including any special status of the foundation or
5 dispensation granted to the foundation prior to the effective
6 date of this 2011 act in other provisions of law."

7 SECTION 9. A new section of the Educational Assistance
8 Act is enacted to read:

9 "[NEW MATERIAL] EDUCATIONAL ASSISTANCE--NONPROFIT
10 CORPORATION STATUS NOT AFFECTED BY REPEAL.--The repeal of
11 sections or parts of sections of the Educational Assistance Act
12 does not affect the existence of the educational assistance
13 nonprofit corporation created pursuant to that act or its
14 designation as the single nonprofit corporation authorized to
15 provide a statewide educational loan program for the purposes
16 of the federal Higher Education Act of 1965."

17 SECTION 10. REPEAL.--Sections 21-21A-2, 21-21A-4,
18 21-21A-17, 21-21A-18, 21-21A-20 and 21-21A-23 NMSA 1978 (being
19 Laws 1981, Chapter 319, Sections 2, 4, 17, 18, 20 and 23, as
20 amended) are repealed.